

### The Honorable Eduardo C. Robreno

**UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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HARRY VERNON

Plaintiff,

vs.

INTERNATIONAL PAPER COMPANY,  
*et al.*

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Defendants.

CIVIL ACTION NO.  
2:18-cv-03902-ER

**PLAINTIFF'S RESPONSE AND MEMORANDUM OF LAW IN OPPOSITION TO  
DEFENDANT OWENS-ILLINOIS INC.'S MOTION FOR LEAVE TO FILE A REPLY  
IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFF'S AMENDED COMPLAINT**

**PRELIMINARY STATEMENT**

Plaintiff files this Response and Memorandum of Law in Opposition to Defendant Owens-Illinois, Inc.'s ("O-I") Motion for Leave to File a Reply in Support of Its Motion to Dismiss Plaintiff's Amended Complaint (ECF No. 16). O-I's Motion for Leave should be denied because it is procedurally defective and fails to demonstrate any legal or factual reason for this Court to permit O-I to file a Reply brief. This Court should therefore disregard O-I's Reply in its entirety. However, to the extent this Court grants O-I's Motion for Leave and considers the improper Reply, Plaintiff opposes O-I's substantive arguments for the reasons outlined in his proposed Sur Reply, attached hereto as Exhibit A. And to the extent this Court grants O-I's Motion for Leave, Plaintiff respectfully requests the same opportunity to file a Motion for Leave to File the attached proposed Sur Reply – in accordance with the Honorable Judge Robreno's Pretrial and Trial Procedures – as it is premature to file that Motion now prior to the Court ruling on O-I's instant Motion for Leave.

**ARGUMENT**

**I. DEFENDANT’S MOTION FOR LEAVE SHOULD BE DENIED AND ITS REPLY BRIEF DISREGARDED BECAUSE IT IS PROCEDURALLY DEFECTIVE.**

O-I’s instant Motion completely ignores The Honorable Eduardo Robreno’s Pretrial and Trial Procedures. Those procedures explicitly state: “Reply and surreply briefs are discouraged unless necessary to rebut an issue or point of law not discussed in the initial briefs. They shall not be filed for motions of any nature without prior leave of the Court. Any motion for leave should be filed of record with a copy of the proposed brief attached as an exhibit to the motion.” Honorable Eduardo Robreno’s Pretrial and Trial Procedures, p. 6 (available at <http://www.paed.uscourts.gov/documents/procedures/robpol.pdf>). O-I failed to comply with any of these procedures: it did not attach a proposed Reply brief as an exhibit to its Motion, and worse, filed a Reply without this Court ever granting it leave to file a Reply.

What is more, O-I makes no attempt whatsoever and therefore fails to meet its burden to demonstrate to this Court why leave should be given to file a Reply. O-I’s entire Motion for Leave is truly just a Reply brief. O-I’s Motion simply posits substantive arguments in reply to Plaintiff’s Response and Memorandum of Law in Opposition to its Motion to Dismiss Plaintiff’s Amended Complaint. O-I makes no legal or factual showing as to why this Court should grant leave to O-I to file a Reply or how the Reply is necessary to rebut an issue of point of law not discussed in the parties’ initial briefs. In accordance with this Court’s own rules, O-I’s instant Motion should be denied and its improper Reply disregarded.

**II. PLAINTIFF’S PROPOSED SUR REPLY.**

To the extent this Court grants O-I’s Motion for Leave and considers O-I’s improper Reply, Plaintiff opposes O-I’s substantive arguments for the reasons outlined in his proposed Sur Reply,

attached hereto as Exhibit A. And to the extent this Court grants O-I's Motion for Leave, Plaintiff respectfully requests the same opportunity to file a Motion for Leave to File the attached proposed Sur Reply – in accordance with the Honorable Judge Robreno's Pretrial and Trial Procedures – as it is premature to file that Motion now prior to the Court ruling on O-I's instant Motion for Leave.

Respectfully submitted,

COHEN, PLACITELLA, AND ROTH, P.C.

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Date: November 16, 2018

**CERTIFICATE OF SERVICE**

I, Jonathan D. Rubinstein, attorney for Plaintiff, hereby certify that a true and correct copy of the foregoing Plaintiff's Response and Memorandum of Law in Opposition to Defendant Owens-Illinois, Inc.'s Motion for Leave to File a Reply in Support of Its Motion to Dismiss, and Exhibit, were filed electronically via the Court's ECF system on the date below, which will automatically send email notification of such filing to all counsel of record.

COHEN, PLACITELLA & ROTH, P.C.

By: /s/ Jonathan D. Rubinstein  
Jonathan D. Rubinstein, Esquire

Dated: November 16, 2018